

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH MICHAEL GUARASCIO,

Plaintiff,

vs.

CIVIL COMPLAINT

FEDERAL BUREAU OF INVESTIGATION,
OFFICE OF INFORMATION POLICY;
U.S. DEPT. OF JUSTICE,
ATTORNEY GENERAL,

Defendant Respondents.

Case: 1:18-cv-02791
Assigned To : Cooper, Christopher R.
Assign. Date : 11/29/2018
Description: FOIA (I-DECK)

JURISDICTION AND VENUE

Joseph Michael Guarascio, Plaintiff pro se ("Plaintiff"), files this civil action pursuant to 28 U.S.C. § 1331 (seeking declaratory and injunctive relief); the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; and The Privacy Act of 1974, 5 U.S.C. § 552(a), pressing a claim that Defendant Respondents have violated the requirements of these Acts by failing to provide the information sought by Plaintiff. The Court is the proper venue as Defendant Respondents are located in this District, and this District is where the denial of said information originated.

PLAINTIFF

Plaintiff, Joseph Michael Guarascio, Inmate No. 70537-056, is and was at all times herein a prisoner of the United States in the custody of the Federal Bureau of Prisons. He is currently confined at the Federal Medical Center, in Fort Worth, Texas.

On February 9, 2010, Plaintiff sustained conviction in the



United States District Court for the Eastern District of North Carolina, Southern Division, Case No. 7:09-cr-109-D-1, for Manufacturing Child Pornography under 18 U.S.C. §§ 2251(a); and 2251(d). Sentencing Court records show Section 2251(d) was listed in error. Plaintiff is currently serving a one hundred eighty (180) month term of imprisonment, the statutory mandatory minimum sentence under § 2251(a).

DEFENDANTS

Defendant Respondent, Federal Bureau of Investigations, Office of Information Policy, is the Government Agency / Office responsible for answering FOIA requests made to the United States Department of Justice, Federal Bureau of Investigations.

Defendant Respondent United States Department of Justice, Attorney General, is the governing office responsible for oversight of the Federal Bureau of Investigations.

Each Defendant Respondent is sued in its official capacity and at all times mentioned in this complaint acted under the color of federal law.

STATEMENT OF FACTS

Plaintiff submits the following relevant facts for consideration:

1. On or About August 13, 2009, Plaintiff met with appointed counsel Mark Edwards ("Edwards") to review a proposed plea agreement. [See Exhibit PX-1 - Plaintiff's Affidavit].
2. Upon review of said Agreement, Plaintiff refused to agree to the terms therein. [Exhibit PX-1].

3. Edwards informed Plaintiff that the Government had agreed to accommodate a wide latitude of changes to the proposed agreement and instructed Plaintiff to make whatever changes necessary to make the agreement acceptable to him. [Exhibit PX-1].

4. Edwards and Plaintiff made numerous modifications to the agreement and Plaintiff was instructed to initial each change. [Exhibit PX-1].

5. Edwards assured Plaintiff that these changes were acceptable to the Government. [Exhibit PX-1].

6. Plaintiff executed the substantially edited Plea Agreement by affixing his signature to page seven thereof. [Exhibit PX-1].

7. Subsequently, that same day, Plaintiff penned and posted a letter to Edwards informing him that he had changed his mind about pleading guilty as he felt he had done nothing wrong. [Exhibit PX-1].

8. Unbeknownst to Plaintiff, Edwards had already faxed the last two pages of the seven-page edited Plea Agreement to the Government Prosecutor shortly after leaving the federal detention facility where Plaintiff was housed. [See Exhibit AX-1, at 6-7 — showing fax header date/time stamp indicating the pages were transmitted via facsimile at 1:43pm on August 13, 2009 as pages 2 and 3 of a three-page facsimile transmission (assuming the first page was the fax cover sheet)].

9. On August 24, 2009, the Government Prosecutor executed a page represented as page seven of a plea agreement with the aforementioned fax header shown on the top of the page. [See AX-1, at 7].

10. On August 27, 2009, the Government Prosecutor entered a Criminal Information [Doc. 1, Criminal Docket Sheet of the above-referenced North Carolina criminal case] charging Plaintiff with a single count of Manufacturing of Child Pornography in violation of 18 U.S.C. §§ 2251(a) and 2251(d).

11. On or about August 20, 2009, Plaintiff received a letter from Edwards in response to Plaintiff's letter of August 13, 2009 informing him of Plaintiff's desire to proceed to trial and instructing him not to forward the Plea Agreement to the Government Prosecutor. [See Exhibit PX-2].

12. On August 27, 2009, the Government Prosecutor filed with the U.S. District Court for the Eastern District of North Carolina - Southern Division, a document purported to be a Plea Agreement agreed to by all parties of the case including Plaintiff. [See Exhibit AX-1; reflected on the Criminal Docket Sheet as Document 8 - a sealed document)].

13. On January 14, 2016, Plaintiff filed a FOIA request to the Federal Bureau of Investigations ("FBI") and the Department of Justice ("DOJ") seeking:

1. Documents (whenever generated), property vouchers of seized property or evidence, any documentation provided or turned over to your agency by other law enforcement agencies, transcripts of (audio, video) interviews pertaining to the prosecution in the following case:

United States v. Joseph Michael Guarascio
7:09-cr-00109-D-1
U.S. District Court
for the Eastern District of North Carolina
Federal Inmate Reg. No. 70537-056.

[See Exhibit PX-3 — Letter to FBI of January 14, 2016].

14. On June 10, 2016, Plaintiff received a Denial letter from the FBI citing a waiver in Plaintiff's Plea Agreement wherein Plaintiff allegedly waived all rights to FOIA information. [See Exhibit PX-4 - Letter of Denial of June 10, 2016 referencing FOIA Request No. 1344722-000].

15. On June 20, 2016, Plaintiff filed an Appeal with the FBI asking for proof of said forfeiture. [See Exhibit PX-5 — Letter of Appeal].

16. On July 14, 2016, Plaintiff received notification that said appeal was being processed under Appeal No. DOJ-AP-2016-004182. [See Exhibit PX-6].

17. On July 18, 2016, Plaintiff received denial of his appeal. [See Exhibit PX-7].

18. On March 19, 2018, Plaintiff filed a second FOIA request citing a case from this Circuit stating a waiver of FOIA rights was unenforceable. [See Exhibit PX-8].

19. On March 20, 2018, the Assistant United States Attorney representing the Warden where Plaintiff is currently confined, filed her Response on behalf of the Defendant Warden in a § 2241 pleading wherein Plaintiff was prosecuting an actual innocence claim in the same criminal case referenced above. In her

Response thereto, the AUSA inadvertently exposed the Plea Agreement on file in the criminal case out of North Carolina, which had been under seal and unavailable to Plaintiff previous to this Response. [See Exhibit PX-9 — Response].

20. On May 9, 2018, Plaintiff received a denial letter pertaining to his new FOIA request, again citing the waiver from the Plea Agreement. [See Exhibit PX-10].

21. On May 14, 2018, Plaintiff filed appeal based on the fact that the Plea Agreement cited as the basis for the Bureau's denial of Plaintiff's FOIA request was plainly unenforceable under contract law. [See Exhibit PX-11].

22. June 5, 2018, Plaintiff received a letter advising him that the appeal is being reviewed under No. 1344722-001. [See Exhibit PX-12].

23. On July 13, 2018, Plaintiff received a letter informing him of the combining of the two appeals [See Exhibit PX-13] and a notice of adjudication of his appeal, No. DOJ-AP-2018-005900, dated July 18, 2018, and the denial thereof — again based on the waiver of Plaintiff's FOIA rights contained in the now-defunct Plea Agreement. [See Exhibit PX-14].

24. On August 4, 2018, Plaintiff penned a response letter to Christina Troiani, Associate Chief, D.O.J. Office of Information Policy. [See Exhibit PX-15].

This appeal follows the second denial.

DISCUSSION

I. Unenforceable Plea Agreement.

Plaintiff asserts that the newly-discovered Plea Agreement — revealed unintentionally as an exhibit to Plaintiff's § 2241 Motion out of the U.S. District Court for the Northern District of Texas, Fort Worth, Division, No. 4:17-cv-01021-Y — is plainly unenforceable. It is a clear violation of contract law to have the last two pages of a seven (7) page criminal plea agreement faxed while the first five pages have no such indication of having been faxed. This situation plainly reveals that the Plea Agreement filed with the District Court did not form an enforceable contract.

Plaintiff suggests that there is no reasonable explanation that would cure the deficiency in this contract. Thus, Plaintiff first seeks a declaratory judgment from the Court that, at least as it relates to the waiver of Plaintiff's FOIA rights, the Plea Agreement relied upon by Defendant Respondents is null and void and as such is unenforceable in regard to Plaintiff's FOIA requests at odds herein.

II. No Legitimate Criminal-Justice Interest Served By Waiver.

Plaintiff next argues that there is no legitimate criminal-justice interest served by the waiver. Moreover, the public interest in enforcing Plaintiff's FOIA waiver is outweighed by the harm to public policy that enforcement would cause. See Price v. U.S. Dept of Justice, et al., 865 F.3d 676 (D.C. Cir.

2017).

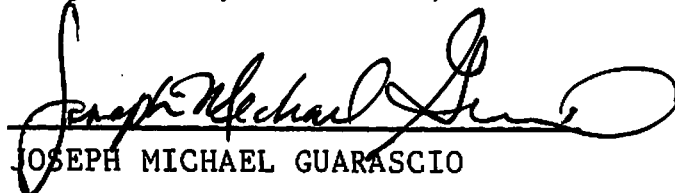
Accordingly, Plaintiff respectfully asks the Court to Order the Federal Bureau of Investigations, Office of Information Policy, to release the documents requested in Plaintiff's FOIA requests.

CONCLUSION

WHEREFORE, for the above-stated reasons and under these legal authorities, Petitioner Prays this Honorable Court will issue the injunctive relief sought herein: 1) a declaratory judgment pronouncing the Plea Agreement relied upon by Defendant Respondents as unenforceable for purposes of denying Plaintiff's FOIA requests; and 2) issuance of an Order that the Federal Bureau of Investigations, Office of Information Policy provide the requested information to Plaintiff.

Executed, subscribed, and sworn to under penalty of perjury pursuant to 28 U.S.C. § 1746, on this 24 day of August, 2018.

Respectfully submitted,



JOSEPH MICHAEL GUARASCIO

Reg. No. 70537-056

Federal Medical Center

P.O. Box 15330

Fort Worth, Texas 76119-0330

Plaintiff Pro Se

Certificate of Service

I, Joseph Michael Guarascio, hereby certify under penalty of perjury that, on this 20th day of November, 2018, I have sent a true and correct copy of the foregoing, through U.S. Mail, pre-paid postage, to the following:

United States District Clerk
United States District Court
for the District of Columbia
333 Constitution Ave., N.W.
Room 1225
Washington, D.C. 20001


JOSEPH MICHAEL GUARASCIO

cc: file